

When an interpreter is not readily available and the hearing impaired deaf or hard-of-hearing person's identity is known, the person may be released by the law enforcement agency into the temporary custody of a reliable family member or other reliable person to await the arrival of the interpreter, if the person is eligible for release on bail and is not believed to be an immediate threat to the person's own safety or the safety of others.

An answer, statement, or admission, oral or written, made by a hearing impaired deaf or hard-of-hearing person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in a criminal proceeding is not admissible in court and shall not be used against the hearing impaired deaf or hard-of-hearing person if that answer, statement, or admission was not made or elicited through a qualified interpreter, unless the hearing impaired deaf or hard-of-hearing person had waived the right to an interpreter pursuant to this section. In the event of a waiver and criminal proceeding, the court shall determine whether the waiver and any subsequent answer, statement, or admission made by the hearing impaired deaf or hard-of-hearing person were knowingly, voluntarily, and intelligently made.

When communication occurs with a person through an interpreter pursuant to this section, all questions or statements and responses shall be relayed through the interpreter. The role of the interpreter is to facilitate communication between the hearing and hearing impaired deaf or hard-of-hearing parties. An interpreter shall not be compelled to answer any question or respond to any statement that serves to violate that role at the time of questioning or arrest or at any subsequent administrative or judicial proceeding.

An interpreter procured under this section shall be paid a reasonable fee and expenses by the governmental subdivision funding the law enforcement agency that procured the interpreter.

Approved May 3, 1993

CHAPTER 76

CHILD ABUSE, DEPENDENT ADULT ABUSE, CHILD CARE, AND JUVENILE SHELTER CARE

S.F. 221

AN ACT relating to department of human services' statutory provisions involving child abuse information, dependent adult abuse, child day care, and juvenile shelter care.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I CHILD ABUSE PROVISIONS

Section 1. Section 232.68, subsection 2, Code 1993, is amended by adding the following new paragraph after paragraph a and relettering the succeeding paragraphs:

NEW PARAGRAPH. b. Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

Sec. 2. Section 232.116, subsection 1, paragraph 1, Code 1993, is amended to read as follows:
1. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for such abuse against physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household and the court finds it is unlikely that the parent will be released within five years.

Sec. 3. Section 235A.15, subsection 3, Code 1993, is amended to read as follows:

3. Access to unfounded child abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (5), and paragraph "e", subparagraph (2), and to the department of justice for purposes of the crime victim compensation program in accordance with section 912.10.

Sec. 4. Section 235A.15, Code 1993, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of legal residency to coordinate the investigation of the report. If the child's state of residency refuses to conduct an investigation, the department shall commence an appropriate investigation.

NEW UNNUMBERED PARAGRAPH. If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an investigation of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an investigation of the report, the department shall commence an appropriate investigation. The department shall seek to develop protocols with states contiguous to this state for coordination in the investigation of a report of child abuse when a person involved with the report is a resident of another state.

Sec. 5. Section 235A.18, subsection 1, Code 1993, is amended to read as follows:

1. Child abuse information relating to a particular case of suspected child abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause be shown why the information should remain open to authorized access. If a subsequent report of a suspected case of child abuse involving the child named in the initial report as the victim of abuse or a person named in such report as having abused a child is received by the registry within this ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the information should remain open to authorized access. The information shall be expunged eight years after the date the information was sealed.

Sec. 6. Section 235A.18, subsection 2, unnumbered paragraph 1, Code 1993, is amended to read as follows:

Child abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be expunged sealed one year after the receipt of the initial report of abuse and child expunged five years after the date it was sealed. Child abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged when it is determined to be unfounded. A report shall be determined to be unfounded as a result of any of the following:

DIVISION II DEPENDENT ADULT ABUSE

Sec. 7. Section 235B.2, subsection 5, paragraph a, subparagraph (1), Code 1993, is amended to read as follows:

(1) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, or unreasonable punishment, or assault of a dependent adult.

DIVISION III
CHILD DAY CARE

Sec. 8. Section 237A.1, subsection 4, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. An instructional program administered by a nonpublic school system which is not accredited by the department of education or the state board of regents.

Sec. 9. Section 237A.1, subsection 9, paragraph b, Code 1993, is amended to read as follows:

b. "Group day care home" means a facility providing child day care for more than six but less than twelve children, with no more than six children at one time being less than six years of age or for less than sixteen children at any one time as authorized in accordance with section 237A.3, subsection 2A, provided each child in excess of six children is attending school full-time on a regular basis.

Sec. 10. Section 237A.3, subsection 1, Code 1993, is amended to read as follows:

1. a. A person who operates or establishes a family day care home may apply to the department for registration under this chapter. The department shall issue a certificate of registration upon receipt of a statement from the family day care home that the home complies with rules adopted by the department. The registration certificate shall be posted in a conspicuous place in the family day care home, shall state the name of the registrant, the number of individuals who may be received for care at any one time, and the address of the home, and shall include a check list of registration compliances.

b. No greater number of children than is authorized by the registration certificate shall be kept in the family day care home at any one time. However, a registered or unregistered family day care home may provide care for more than six but less than twelve children at any one time for a period of less than two hours, provided that each child in excess of six children is attending school full-time on a regular basis.

c. A family day care home may provide care in accordance with this subsection for more than six but less than twelve children for two hours or more during a day with inclement weather following the cancellation of school classes. The home must have prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home pursuant to this paragraph. The home must have a responsible individual, age fourteen or older, on duty to assist the home provider when more than six children are present in accordance with the provisions of this paragraph. In addition, one or more of the following conditions shall apply to each child present in the home in excess of six children:

(1) The home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child was not present in the family day care home, the child would be unattended.

(3) The home regularly provides care to a sibling of the child.

d. In determining the number of children cared for at any one time in a registered or unregistered family day care home, if the person who operates or establishes the home is a child's parent, guardian, relative, or custodian and the child is not attending school full-time on a regular basis or is not receiving child day care full-time on a regular basis from another person, the child shall be considered to be receiving child day care from the person and shall be counted as one of the children cared for in the home.

e. The registration process may be repeated on an annual basis.

f. A child day care provider or program which is not a family day care home by reason of the definition of child day care in section 237A.1, subsection 4, but which provides care, supervision or guidance to a child may be issued a certificate of registration under this chapter.

Sec. 11. Section 237A.3, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A registered group day care home may provide care in accordance with this subsection for more than eleven but less than sixteen children for a period of less than two hours or for a period of two hours or more during a day with inclement weather following the cancellation of school classes. The home must have the prior written approval

from the parent or guardian of each child present in the home concerning the presence of excess children in the home. In addition, one or more of the following conditions shall apply to each child present in the home in excess of eleven children during a period of inclement weather:

- a. The group day care home provides care to the child on a regular basis for periods of less than two hours.
- b. If the child was not present in the group day care home, the child would be unattended.
- c. The group day care home provides care to a sibling of the child.

Sec. 12. Section 237A.27, Code 1993, is amended to read as follows:
237A.27 CRISIS CHILD CARE.

The department shall establish a special child care registration or licensure classification for crisis child care which is provided on a temporary emergency basis to a child when there is reason to believe that the child may be subject to abuse or neglect. The special classification is not subject to the definitional restrictions of child day care in this chapter relating to the provision of child day care for a period of less than twenty-four hours per day on a regular basis. However, the provision of crisis child care shall be limited to a period of not more than seventy-two hours for a child during any single stay. A person providing crisis child care must be registered or licensed under this chapter and must be participating or have previously participated in the federal crisis nursery pilot project. The department shall adopt rules pursuant to chapter 17A to implement this section.

Sec. 13. NEW SECTION. 237A.28 STATE AND FEDERAL FUNDING OF CHILD DAY CARE.

State funds and federal funds provided to the state in accordance with federal requirements shall not be used to pay for the care, supervision, or guidance of a child for periods of less than twenty-four hours per day on a regular basis in a place other than the child's home unless the care, supervision, or guidance is defined as child day care as used in this chapter.

Sec. 14. EMERGENCY RULES. The department of human services shall adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of section 12 of this Act by July 1, 1993. Any rules adopted in accordance with the provisions of this section shall also be published as a notice of intended action as provided in section 17A.4.

DIVISION IV JUVENILE SHELTER CARE

Sec. 15. Section 232.141, subsection 8, Code 1993, is amended by striking the subsection and inserting in lieu thereof the following:

8. This subsection applies only to placements in a juvenile shelter care home which is publicly owned, operated as a county or multicounty shelter care home, organized under a chapter 28E agreement, or operated by a private juvenile shelter care home. If the actual and allowable costs of a child's shelter care placement exceed the amount the department is authorized to pay in accordance with law and administrative rule, the unpaid costs may be recovered from the child's county of legal settlement. However, the maximum amount of the unpaid costs which may be recovered under this subsection is limited to the difference between the amount the department is authorized to pay and the statewide average of the actual and allowable rates in effect in May of the preceding fiscal year for reimbursement of juvenile shelter care homes. In no case shall the home be reimbursed for more than the home's actual and allowable costs. The unpaid costs are payable pursuant to filing of verified claims against the county of legal settlement. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute between counties arising from filings of claims pursuant to this subsection shall be settled in the manner provided to determine legal settlement in section 230.12.